

E2JJHERS

Sentence

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

V.

06 Cr. 838 KMW

RICHARD HERNANDEZ,

Defendant.

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9 February 19, 2014
3:07 p.m.

12 Before:

HON. KIMBA M. WOOD,

District Judge

APPEARANCES

PREET BHARARA,

United States Attorney for the
Southern District of New York

JESSICA MASSELLA,

Assistant United States Attorney

JOSEPH A. GROB,

Attorney for defendant Hernandez

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1 (In open court)

2 THE COURT: Good afternoon. Please have a seat.

3 (Case called)

4 THE COURT: Good afternoon, Mr. Hernandez.

5 THE DEFENDANT: Good afternoon, your Honor.

6 THE COURT: We are here for the sentencing of
7 Mr. Hernandez. Is there any reason to seal the courtroom?

8 MS. MASELLA: No, your Honor.

9 THE COURT: Nor the transcript?

10 MS. MASELLA: No, your Honor.

11 THE COURT: Okay. I'd like to first ask Mr. Grob,
12 have you and Mr. Hernandez had an adequate opportunity to
13 review the presentence report?

14 MR. GROB: Yes, your Honor.

15 THE COURT: Do you want any changes made to it?

16 MR. GROB: No, your Honor.

17 THE COURT: I have read the government's very
18 detailed, helpful and glowing letter concerning Mr. Hernandez's
19 assistance to the government as well as the fact that the
20 government would not have known of most of his crimes had he
21 not come forward to cooperate.

22 I also know that he has spent roughly twelve years in
23 custody. I would be glad to hear anything that you wish to say
24 with respect to sentencing. I would be glad to hear
25 Mr. Hernandez if he wishes to speak.

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1 MR. GROB: Your Honor, it is hard when I know from
2 what you just said you paid careful attention to my submission.

3 THE COURT: Don't worry.

4 MR. GROB: I don't like to repeat what I've said
5 there. There are couple of points, though, that I think are at
6 least worth mentioning even if it is in the course of
7 repetition.

8 Number one, Richard has been waiting for this day for
9 a very long time. One of the things that tells you it has been
10 a long time is that the prosecutor is not the same prosecutor,
11 the defense lawyer is not the same defense lawyer, and the
12 judge is not the same judge. That tells you this case has been
13 here for a very long time.

14 Putting aside the issues of cooperation for a moment,
15 the 10-year-time period for Richard that he spent next door in
16 the MCC has been significant. Forget about every reason that I
17 put in my letter, forget about the conditions there for a
18 moment. The one condition I want you to focus on are the SEPS
19 that Richard had while he was sitting in that building because
20 that prevented him basically from going off of his unit.

21 When it prevented him going off of his unit for work
22 or recreation, the problem becomes he has nothing to do all day
23 to fill that time, whereas if he spent the time in a federal
24 prison facility, he would have been able to at least get out a
25 little bit and participate in more rehabilitative-type

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1 programs. I want your Honor to understand his lack of
2 participation is not from a lack of desire. He wanted to take
3 every program that they had at the MCC, but he was sort of
4 prevented from doing so because any time he wanted to go off of
5 his units, there so many SEPS against him, he could not. In
6 addition to his remorse and everything else, he has worked on
7 his own rehabilitation, but he wasn't able to get anything out
8 of the Bureau of Prisons, and that is unfortunate.

9 Nevertheless, the last 10 years living alone,
10 essentially he has had the time to think. I pointed that out
11 to your Honor. He started thinking I think from the first
12 moment he was arrested, but it all crystallized for him as he
13 was sitting there thinking if I don't do what I need to do, I
14 am going to be sitting here for the rest of my life and I don't
15 want to do that.

16 He took a brave step to tell his attorney to reach out
17 to the government to facilitate this case and to facilitate his
18 cooperation. On top of that, he cooperated against some very
19 seriously violent people, as your Honor is aware.

20 For all of those reasons, and the reasons previously
21 stated in my sentencing submission, I ask your Honor to follow
22 Probation's recommendation. He has essentially been in custody
23 for twelve years in total. I don't think that society or the
24 government will benefit by any increased time here.

25 He has learned his lesson. He learned it painfully,

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1 and I think that twelve years has taught him everything he
2 needs to know about whether or not to go out and commit a crime
3 again. Thank you.

4 THE COURT: Thank you very much.

5 Mr. Hernandez, there is no requirement for you to
6 speak, but if you would like to speak, I would be glad to hear
7 you now.

8 THE DEFENDANT: Yes, your Honor. Good afternoon.

9 THE COURT: Good afternoon.

10 THE DEFENDANT: I want to say I am sorry for my -- not
11 mistake, no, but the bad choice I chose back in the days when I
12 was young, and I want to thank the United States Government for
13 giving me another opportunity in my life, thank my family to
14 support me in of all of this time, my son, stepmother, sister
15 and brother, stepdaughter.

16 My lawyer, the last three years he has been nice to
17 me, helping me and telling me the right way to start being, and
18 I am very sorry and I want to apologize for the crime I
19 committed when I was young. I think I am a better man now than
20 I was before.

21 THE COURT: Thank you very much.

22 THE DEFENDANT: Thank you, your Honor.

23 MR. GROB: There are two more brief points I want to
24 make. One point, as Richard just said right now, he corrected
25 himself. He was going to say, "my mistakes." It wasn't a

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1 mistake. He made bad choices and he recognizes that. That is
2 something that is significant and telling about Richard. The
3 other thing I neglected to mention, he has a whole complement
4 of people here, starting with his ex-wife, his son, his
5 stepbrother, stepdaughter -- stepmother and uncle who have been
6 extremely supportive.

7 THE COURT: Welcome to all of you. Thank you for
8 coming.

9 MR. GROB: They have been extremely supportive during
10 the entire process. It finally dawns on me he was about 25
11 or 26 when he came into the system. He is leaving the system
12 about 38. That is a lifetime, and certainly a lifetime is
13 enough. Thank you.

14 THE COURT: Thank you very much.

15 Would the government like to be heard?

16 MS. MASELLA: Your Honor, just briefly. It is clear
17 that the court has reviewed our letter, and we do move at this
18 point pursuant to Section 5K1.1 for departure.

19 THE COURT: I grant the motion. Go ahead.

20 MS. MASELLA: Thank your Honor.

21 The one thing I wanted to emphasize with respect to
22 this particular case is that for Mr. Hernandez, cooperation was
23 a big leap of faith on his part. He came in extremely early in
24 the process, before he was aware, as far as we know it, have
25 any reason to believe there was any ongoing investigation into

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1 these very serious crimes. He agreed to plead guilty to them,
2 and then he agreed to wait as long as necessary while the
3 government put together an investigation and a prosecution of
4 other individuals.

5 He had a full understanding that that process could
6 take years, and it did take a significant amount of time in
7 this case, but he had no way of really knowing how it would all
8 turn out. All he knew was he was going to take responsibility
9 for these crimes and then wait to see if he would, in fact, be
10 able to provide substantial assistance.

11 This is the kind of cooperation that is very, very
12 significant to the government and it allows us to solve serious
13 crimes that we are very dedicated to solving which would
14 probably otherwise go unprosecuted and unsolved.

15 So I wanted to emphasize that, and unless the court
16 has any other questions about the particular facts of this
17 case, we would rest on our letter.

18 THE COURT: I don't have any questions. I found your
19 letter and Mr. Grob's submission to give me a very full
20 picture.

21 MR. GROB: If I may? The government also means to
22 move pursuant to 3553 (e) so we can avoid any mandatory
23 minimums.

24 MS. MASELLA: Yes.

25 THE COURT: Yes, of course, and I grant that.

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I think Ms. Masella has put it very well when she explains that your cooperation is the kind of cooperation that our government particularly needs when the government had so little information about most of the crimes that you helped the government solve. For this you deserve enormous credit.

I don't know what the future holds for you, but I see that you have a very supportive family, and you'll be going home to them right away, and I hope that you do well. You certainly deserve every leniency the court can give now because of your honesty, your carefulness and your sticking with this for such a long time.

THE DEFENDANT: Thank you, your Honor.

THE COURT: I am required to calculate the advisory sentencing guidelines. The total offense level is 42, as set forth in the presentence report. Mr. Hernandez has a Criminal History Category III. If I were to sentence him pursuant to the guidelines, I would depart downward under 5K1.1 to a sentence of time-served on all counts.

I'll ask you to stand, Mr. Hernandez.

I sentence you for all the reasons I've stated to time-served. I have to note the factors under Section 3553, and I do that now. Your crimes, I don't need to describe them, we know what they were. They were extraordinarily serious, some of them very violent.

Your character, I believe, has been molded by the time

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1 that you have spent in prison and I truly believe that you are
2 a different man from the young man you described who made those
3 bad choices. I believe that you are a good family man and that
4 you will not violate the law again. I think you have
5 completely learned whatever lessons needed to be learned. I
6 think individual deterrence has been served as has general
7 deterrence by the long time you spent cooperating.

8 I, thus, sentence you to time-served on all counts, to
9 supervised release of three years on each count, to run
10 concurrently with one another.

11 I impose no fine because you don't have the money to
12 pay a fine. Let me ask the government about forfeiture. Is
13 there an order I need to enter?

14 MS. MASELLA: No, your Honor.

15 THE COURT: All right. I impose no forfeiture.

16 I impose the special assessment of \$800.00, which is
17 required. You may have a seat while I read you the conditions
18 of release.

19 THE DEFENDANT: Thank you.

20 THE COURT: The standard and mandatory conditions of
21 supervision will apply, and I am read you now from Pages 24 to
22 25 of the presentence report. The following special conditions
23 will apply:

24 You must participate in a program approved by the U.S.
25 Probation Office, which may include testing to determine

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1 whether you have reverted to using drugs or alcohol. I
2 authorize the release of available drug treatment evaluations
3 and reports to the substance abuse treatment provider as
4 approved by your probation officer. You will be required to
5 contribute to the costs of services rendered (co-payment) in an
6 amount determined by your probation officer based on whether
7 you have the ability to pay or based upon the availability of
8 third-party payment;

9 Second, you must obey the immigration laws and comply
10 with the directives of immigration authorities;

11 Third, you must submit your person, residence, place
12 of business, vehicle or any other premises under your control
13 to a search, on the basis that the probation officer has
14 reasonable belief that contraband or evidence of a violation of
15 the conditions of release may be found. The search must be
16 conducted at a reasonable time and in a reasonable manner.
17 Failure to submit to a search may be grounds for revocation.
18 You must inform any other residents that the premises may be
19 subject to search pursuant to this condition.

20 I am going to take one moment to speak to my law
21 clerk.

22 (Off-the-record discussion)

23 THE COURT: Let me ask you, when I put the prisoner
24 number down on my order, do I use the U.S. Marshal's number
25 or --

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1 MS. MASELLA: I believe it would be the U.S. Marshal
2 number.

3 MR. GROB: We have nothing else to say other than
4 thank you.

5 THE COURT: One moment. (Pause)

6 When you are released from custody, which will be
7 shortly, you must report to the nearest Probation Office within
8 72 hours of your release from custody. You will be supervised
9 by the district of residence. I have signed an order for
10 Mr. Hernandez's release. Is there anything further before I
11 read him his appeal rights?

12 MS. MASELLA: Not from the government, your Honor.

13 MR. GROB: No, your Honor.

14 THE COURT: Mr. Hernandez, I read every defendant his
15 appeal rights, and it is my job to read you yours as well.

16 You can appeal your conviction if you believe that
17 your guilty plea was somehow unlawful or involuntary or if
18 there is some other fundamentally defect in the proceedings
19 that was not waived by your guilty plea.

20 You also have a statutory right to appeal your
21 sentence under certain circumstances. With few exceptions, any
22 notice of appeal must be filed within 14 days of judgment being
23 entered in your case. Judgment is likely to be entered within
24 the next few days.

25 If you decide you want to appeal and you cannot afford

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1 to pay the cost of any appeal, you may apply for leave to
2 appeal in forma pauperis. If you request, the Clerk of the
3 Court will prepare and file a notice of appeal on your behalf.

4 I want to tell you that I think your behavior as a
5 cooperator has been honorable and I wish you good luck.

6 THE DEFENDANT: Thank your Honor.

7 THE COURT: Thank you.

8 (Court adjourned)

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